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DEC 20 2010

OFFICE OF PETITIONS

In re Application of : DECISION ON PETITION
Van Alstyne, et al. :
Application No. 09/489,850 :
Filed: January 24, 2000 :
For: METHODS TO CLEAR MENINGITIS :
CAUSING AGENTS USING ANTOBODIES :
TO PEPTIDES REPRESENTING EPITOPIIC :
SITES FOR BACTERIAL AND VIRAL :
MENINGITIS CAUSING AGENTS :
:

This is a decision on the renewed petition under 37 CFR 1.181 and 137 CFR 1.137(b), filed April 13, 2010, to revive the above-identified application.

This application became abandoned March 19, 2007 for failure to timely reply to the non-final Office action mailed December 18, 2006. The non-final Office action set a three month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely requested. Notice of Abandonment was mailed July 26, 2007.

DECISION UNDER 37 CFR 1.181

Petitioners assert non-receipt of the non-final Office action. Petitioners further assert that applicants failed to properly notify the USPTO of applicants' change in correspondence address.

As a result of failure to properly submit a change of correspondence address, the non-final Office action was not received by applicants and was instead returned to the USPTO as undeliverable. There is no indication in the record that a change of correspondence address was properly submitted to the USPTO prior to the mailing of the non-final Office on December 18, 2006.

Where an application becomes abandoned as a consequence of a change of correspondence address, applicants are required to make a convincing showing that due care was taken to adhere to the requirement for prompt notification of the change of address and must include an adequate showing that a timely notification of the change of address was filed in the application concerned in a manner reasonably calculated to call attention to the fact that it was a notification of change of address. See, MPEP 711.03(c).

The non-final Office action was properly mailed to the correspondence address of record. A proper change of correspondence address was not submitted to the USPTO until January 21, 2009. Applicants' failure to properly submit a change of correspondence address is not grounds for withdrawal of the holding of abandonment within the meaning of 37 CFR 1.181.

Accordingly, the petition under 37 CFR 1.181 is hereby **DISMISSED**.

DECISION UNDER 37 CFR 1.137(b)

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

As to item (1), the instant petition is not accompanied by the required reply to the non-final Office action mailed December 18, 2006. A copy of the non-final Office action is enclosed as a courtesy.

As to item (2), the required petition fee was received April 13, 2010.

As to item (3), petitioners acknowledge that the delay in filing the required reply was unintentional. Nonetheless, 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

As to item (4), a terminal disclaimer is not required given this application was filed post-June 8, 1995 and is not a design application.

Any request for reconsideration of this decision must include the required reply to the non-final Office action.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: **(571) 273-8300**
 Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 571-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure